PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

October 18, 2002

TO: PARTIES OF RECORD IN CASE 01-06-008

This proceeding was filed on June 4, 2001, and is assigned to Commissioner Geoffrey Brown and Administrative Law Judge (ALJ) Glen Walker. This is the decision of the Presiding Officer, ALJ Walker.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (i.e., the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (See, generally, Rule 8.2 of the Commission's Rules of Practice and Procedure.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ CAROL A. BROWN
Carol A. Brown, Interim Chief
Administrative Law Judge

CAB:tcg

Attachment

ALJ/POD-GEW/tcg

PRESIDING OFFICER'S DECISION (Mailed 10/18/2002)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Yucaipa Mobilehome Residents' Association ("YMRA"), a California nonprofit corporation, by Len Tyler, President of YMRA, as representative of the residents of Knollwood Mobilehome Park; Edna Jenkins, a represented Member of YMRA, an individual and resident Of Knollwood Mobilehome Park; and Nancy L. Carlisle, a represented member of YMRA, an Individual and resident of Knollwood Mobilehome Park, Complainants, vs. Knollwood Mobilehome Estates, Ltd., a California Partnership, doing business as Knollwood Mobilehome Estates, Defendant.	Case 01-06-008 (Filed June 4, 2001)

Richard I. Singer, Attorney at Law, for Yucaipa Mobilehome Residents' Association, et al., complainants.
C. William Dahlin, Attorney at Law, for Knollwood Mobilehome Estates, Ltd., defendant.

OPINION ON COMPLAINT REGARDING MOBILEHOME RENT INCREASE

1. Summary

Complainants, representing residents of Knollwood Mobilehome Estates (Knollwood), a mobilehome park in Yucaipa, contest a capital improvement rent increase approved by the City of Yucaipa Rent Review Commission in 1999. The rent increase ($17.40 per month for 20 years) covered cost of work on a water system and on some of the gas and electric facilities within the park. Knollwood asserts that the improvements cost more than $500,000 and that its application for a $250,000 rent adjustment excluded all costs that would be subject to the jurisdiction of this Commission. Complainants allege that some of the costs are subject to the exclusive jurisdiction of this Commission and should not have been approved by the Rent Review Commission. This decision concludes that the Commission lacks jurisdiction to rule on improvements to the water system, which is served by a publicly owned water district, and that complainants' burden of proof has not been met as to the work on gas and electric systems. Accordingly, the complaint is dismissed.

2. Procedural History

On November 27, 2001, the assigned Administrative Law Judge (ALJ) dismissed those portions of the complaint seeking reversal of the rent increase as to replacement of the water system and improvements to gas and electrical components between submeters and individual mobilehomes. Complainants agreed that water system costs were not subject to Commission jurisdiction, and they did not challenge exclusion of costs for gas and electric components between submeters and individual mobilehomes.

On January 11, 2002, the assigned Commissioner issued a Scoping Memo setting dates for hearing and defining the issues to be decided as follows:

- Do trenching costs include any amount solely attributable to gas and electricity in such a manner as to fall within the exclusive jurisdiction of the Commission?
- Were items such as pedestals and meters improperly included in costs that were passed along to residents?
- Were administrative costs improperly included in costs that were passed along to residents?
- Are residents precluded from bringing this action because of the earlier decisions of the Rent Review Commission and the Superior Court?

At the request of the parties, the Commission on February 7, 2002, extended the statutory deadline for resolution of this case under Pub. Util.Code § 1701.2(d) to November 22, 2002, to allow additional time for discovery. On March 15, 2002, the ALJ granted complainants' request for a 60-day stay to seek substitute counsel. The hearing date was rescheduled to July 18, 2002, in Riverside. The Commission again extended the date for resolution of this case to February 28, 2003. One day of hearing was conducted on July 18, 2002. Concurrent briefs were filed on September 20, 2002, reply briefs were filed on October 4, 2002, and the case was then deemed submitted for decision.

3. Commission Jurisdiction

This case is governed primarily by Pub.Util.Code § 739.5, which provides in pertinent part:

> The commission shall require that, whenever gas or electric service, or both, is provided by a master-meter customer to users who are tenants of a mobilehome park, apartment building, or similar residential complex, the master-meter customer shall charge each user of the service at the same rate which would be applicable if the user were receiving gas or electricity, or both, directly from the gas or electrical corporation. The commission shall require the corporation

> furnishing service to the master-meter customer to establish uniform rates for master-meter service at a level which will provide a sufficient differential to cover the reasonable average costs to master-meter customers of providing submeter service, except that these costs shall not exceed the average cost that the corporation would have incurred in providing comparable services directly to the users of the service.

In *Re Rates, Charges, and Practices of Electric and Gas Utilities Providing Services to Master-metered Mobile Home Parks* (1995) 58 CPUC2d 709, the Commission held that master-metered park owners are barred from recovering the costs of improving, repairing or replacing their gas and electric systems through rent increases. The Commission reasoned that the discount that the park owner receives from gas and electric utilities is intended to cover the average costs of such maintenance, repair and replacement. (*Re Rates,* 58 CPUC2d at 710.) In *Rainbow v. Escondido Mobilehome Rent Review Board* (1998) 64 Cal.App.4th 1159, the Court of Appeal held that the Commission's ruling in *Re Rates* is binding on all of the courts of this state.

In furtherance of the jurisdiction granted it, the Commission has required gas and electric utilities to include in their tariffs the requirements set forth in Pub. Util. Code § 739.5 when the utilities provide service to a mobilehome park. Utility tariffs have the force and effect of law. (*Dyke Water Co. v. Pub. Util. Com.* (1961) 56 Cal.2d 105, 123.) Knollwood and its tenants are subject to the utility rates and regulations ordered by this Commission pursuant to § 739.5.

4. Background

Knollwood is a 116-space mobilehome park established approximately 40 years ago in Yucaipa. In 1998, Knollwood gave notice to the Rent Review Commission that it planned a substantial capital improvement project at the park

involving delivery of gas, electricity and water service to the individual mobilehomes.

Knollwood obtained two bids for the project. It then met with tenants of the park and presented the proposed project and its cost to them. Tenants of at least 51% of the occupied spaces in the park approved the project, as required by Yucaipa's Rent Stabilization Ordinance. A contract for construction of the project was executed in August 1998 and work began soon after. In February 1999, the City of Yucaipa issued its final inspection of the project and notice of completion.

On February 25, 1999, Knollwood applied to the Rent Review Commission for a capital improvement rent increase by which it would pass through to the tenants the portion of the gas and electrical project that ran from the submeters to the coaches and all of the cost of the water system project. The administrator of the Rent Review Commission denied the application on advice of legal counsel that rent increases based on the cost of improving utilities are within the exclusive jurisdiction of the Public Utilities Commission. Knollwood appealed the decision to the Rent Review Commission.

A public hearing on the appeal was held before the Rent Review Commission on June 25, 1999. A representative of the tenants raised objections to the proposed rent increase. Knollwood's representative presented evidence defining the water project and defining those parts of the gas and electric projects that it argued were not subject to § 739.5. Based on cost evidence introduced at the hearing, the Rent Review Commission adopted Resolution 99-02 authorizing a rent increase of $17.40 per month per space for 20 years.

Certain residents then brought an action in the San Bernardino Superior Court. The Court dismissed the action, finding in part as follows:

> Based on published decisions of the PUC and cases that have interpreted them…while the costs associated with maintaining gas and electrical systems from the main meter to the submeters cannot be passed through to park residents, the costs associated with the system from the submeters to the individual coaches can. Further…the PUC regulations do not apply to the water system utility in this case because water service comes from the Yucaipa Valley Water District, an independent special district." (*Jenkins v. City of Yucaipa, et al.,* Case No. SCVSS 60679, Notice of Decision, February 14, 2000.)

Plaintiffs in the *Jenkins* case appealed the decision to the Fourth District Court of Appeal. The appeal was dismissed and the judgment of the San Bernardino Superior Court became final.

Knollwood argues that this Commission must give res judicata and collateral estoppel effect to the final decisions of the Rent Review Commission and the Superior Court. We do not agree. As we stated in *Steiner v. Palm Springs Mobilehome Properties, et al.,* Decision (D.) 97-07-009 (1997), this Commission has exclusive jurisdiction to regulate certain utility rates in the state's mobilehome parks. While we extend great deference to the decisions of the Rent Review Commission and the Superior Court, those decisions cannot stand if we determine that they intrude upon our ratemaking jurisdiction. (*See Pacific Tel. & Tel. Co. v. Superior Court* (1963) 60 Cal.2d 426.)

5. Discussion

We begin with an examination of Knollwood's costs to replace the park's water system. The ALJ granted a motion to dismiss that portion of the complaint. We affirm.

Pub. Util. Code §§ 2705.5 and 2705.6 provide that the Commission has jurisdiction over water service rates in a mobilehome park if the park owner both submeters the water and charges a rate other than the rate that would be charged

if tenants were receiving water directly from a water corporation. It is undisputed that Knollwood does not submeter its water, and water service is included in the monthly rent. Moreover, Knollwood receives its water from Yucaipa Valley Water District, a public district not subject to the jurisdiction of this Commission. The Commission has held that § 2705.5 applies only to those mobilehome parks that obtain water from Commission-regulated water utilities. (*In re Rate, Charges, and Practices of Water and Sewer Utilities Providing Service to Mobilehome Parks,* D.01-05-058 (2001), as modified by D.01-10-068 (2001).)

It follows that costs of the rent increase attributable to capital improvements of the water system at Knollwood (estimated in the complaint to be $58,768 for the water system and $111,445 for associated trenching and other work) are not subject to the jurisdiction of this Commission.

Complainants do not dispute this analysis. They state that they do not seek adjustment for replacement costs of the water system. Instead, because water, gas and electric facilities shared the trenches, complainants seek reallocation of trenching costs equally between the water system (cost of which is not subject to Commission jurisdiction) and the gas and electric systems (cost of which is subject to § 739.5).

At hearing, complainants' witness testified that costs for common trenching typically are either negotiated between or shared by utilities when the utilities are responsible for such costs.[1] It was also shown that Knollwood sought a city permit for electrical work before it sought a permit for replacement of the water system. On the other hand, the managing partner for Knollwood testified

[1] Complainants' request on September 10, 2002, to make changes, some of them substantive, in the transcribed testimony of two of their witnesses is denied.

that replacement of the water system was the driving force behind the capital improvement work, and that improvements to gas and electric systems would not have been made but for the economies of doing gas and electric work at the same time that the water system was replaced.

Complainants argue that the Commission decision in *Home Owners Association v. Lamplighter Mobile Home Park*, D.99-02-001 (1999), requires that some of the costs of trenching should be attributed to the regulated gas and electric systems. In *Lamplighter,* however, complainants were able to show that $82,412 of trenching and other costs were attributable to electrical work. Here, apart from speculation, complainants present no evidence that gas and electrical work increased the cost of trenching beyond that required for replacement of the water system.

It is undisputed that Knollwood's costs of replacing its water system are outside the jurisdiction of this Commission. That responsibility rests with the Yucaipa Rent Review Commission, which reviewed and approved the water system costs. It follows that any allotment of water system costs should have been, and certainly could have been, raised and considered in the Rent Review Commission hearing. We are presented with no evidence to show that the Rent Commission's decision approving trenching costs as a water expense is in error or intrudes on this Commission's jurisdiction. We are aware of no law or tariff that requires allocation of trenching costs, and complainants direct us to none. It follows that complainants' request that this Commission reallocate such costs is not supported by this record, and the request should be denied.

At hearing, complainants also contested the charge of $242 per unit for labor and material for gas facilities and $496 per unit for electric work between submeters and individual mobilehomes. A retired 40-year employee of Southern

California Gas Company testified that limited work between submeters and individual units should have cost substantially less. Knollwood's managing partner testified that the costs were in line with, and somewhat below, the costs he has seen for similar work at other mobilehome parks.

Subsection (d) of § 739.5 provides that a mobilehome park owner is responsible for the costs of operating, maintaining and repairing the gas and electric systems between the master meter and the individual submeters of the mobilehomes. We have interpreted this to mean that repairs between an individual submeter and a mobilehome are the responsibility of the tenant, not the mobilehome park owner. (*Steiner v. Palm Springs Mobilehome Properties* (1997) 73 CPUC2d 369, 372, *rehearing denied* (1997) 76 CPUC2d 528.)

Complainants contend that our recent decision in *Hambly v. Hillsboro Properties and City of Novato,* D.01-08-040 (2001), *rehearing denied* D.02-01-043 (2002), precludes recovery of costs for gas and electric work between a submeter and a mobilehome because such charges (in the words of *Hambly*) "implicate line extension allowances." (*Hambly*, 2001 Cal. PUC LEXIS 497, p. 12.) Complainants' interpretation of *Hambly* goes too far.

Line extension allowances come into the equation because § 739.5(a) requires that a master-meter customer charge each user of the service at the same rate that would be applicable if the user were receiving service directly from the gas or electrical corporation. Generally speaking, the tenant may be charged (1) the utilities' standard residential rates, and (2) certain costs that a private homeowner would have paid to the utility for direct service under the utility's line extension rules and general rate case rulings.

Hambly involved service provided by Pacific Gas and Electric Company (PG&E). As relevant here, *Hambly* raised the question whether meter pedestals

are covered by the master-meter discount accorded mobilehome park owners by PG&E. There was no discussion in *Hambly* of PG&E line extension rules. In this case, involving Southern California Edison Company (SCE) and Southern California Gas Company (SCG) instead of PG&E, there has been exhaustive testimony and analysis of SCE and SCG line extension rules. While much of the analysis might better be reserved for a general rate case or generic proceeding open to utilities and other major players, the line extension rules introduced at hearing support the position of the park owner. SCG Rule 21 makes individual homeowners responsible for "furnishing, installing, owning and maintaining all support pads, meter or regulator valves, or other Substructures" beyond individual submeters. SCE Rule 16 requires the homeowner "to furnish, install, own, maintain, inspect, and keep in good condition, all facilities" beyond the submeter that are necessary for the homeowner to receive electrical service.

Based on the evidence in this case, the ALJ granted a motion to dismiss allegations of the complaint that went to costs incurred between individual submeters and mobilehomes, concluding that review of such costs was the responsibility of the Rent Review Commission. We agree. Complainants raised these cost arguments before both the Rent Review Commission and the Superior Court, and both the Rent Review Commission and the Court found that these arguments were without merit. The anecdotal evidence presented at our hearing does not justify further review.

6. Conclusion

In a complaint case, complainants have the burden of showing by a preponderance of the evidence that there has been a violation of law or a violation of Commission rule or order. (Pub. Util. Code § 1702.) For the reasons that we have stated, we find that complainants on this record have not met their

burden of proof in showing that the Knollwood rent increase is unlawful because it includes charges that are within our exclusive jurisdiction. We rule as follows on the issues identified in the Scoping Memo for this proceeding:

1. Complainants have failed to show that gas and electrical work increased the cost of trenching beyond that required for replacement of the water system.
2. Complainants have failed to show that the cost of equipment installed beyond individual submeters was improperly included in the Knollwood rent increase.
3. There is no evidence that administrative costs were improperly included in the Knollwood rent increase.
4. Decisions of the Rent Review Commission and the Superior Court have no effect on matters that are within the exclusive jurisdiction of this Commission under Pub.Util.Code § 739.5. (*Rainbow v. Escondido Mobilehome Rent Review Board, supra.*)

7. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Glen Walker is the assigned ALJ in this proceeding.

Findings of Fact

1. Knollwood is a 116-space mobilehome park established approximately 40 years ago in Yucaipa.

2. In 1999, Knollwood completed a substantial capital improvement project involving delivery of gas, electricity and water service to the individual mobilehomes.

3. On February 25, 1999, Knollwood applied to the Yucaipa Rent Review Commission for a capital improvement rent increase by which it would pass to tenants certain costs of the capital improvements.

4. The costs that Knollwood proposed to pass to tenants included all of the costs of the water system replacement and most of the costs of gas and electric work between individual submeters and mobilehomes.

5. A public hearing on Knollwood's application was conducted by the Rent Review Commission on June 25, 1999.

6. The Rent Review Commission adopted Resolution 99-02 authorizing Knollwood to increase rents by $17.40 per month per space for 20 years.

7. Certain residents appealed the Rent Commission's decision in the San Bernardino Superior Court on grounds that the matter was within the exclusive jurisdiction of the Public Utilities Commission.

8. The Superior Court dismissed the appeal, holding that Public Utilities Commission regulations apply to neither the water system at Knollwood nor to costs associated with the system from the submeters to the individual coaches.

9. This complaint was filed on June 4, 2001, and the statutory one-year deadline for resolving it was twice extended by the Commission to accommodate the parties.

10. A hearing was held on July 18, 2002, and the case was deemed submitted for decision on October 4, 2002, when reply briefs were received.

Conclusions of Law

1. The issues in this case are governed primarily by Pub. Util. Code § 739.5.

2. Because Knollwood does not submeter its water, and because Knollwood receives its water from a public district not subject to the jurisdiction of this Commission, replacement of the water system at Knollwood does not come under the jurisdiction of the Commission under Pub. Util. Code §§ 1705.5 and 2705.6.

3. Any allotment of water system costs is under the jurisdiction of the Yucaipa Rent Review Commission.

4. Generally, repairs of gas and electric systems between an individual submeter and a mobilehome are the responsibility of the tenant, not the mobilehome park owner.

5. The ALJ Rulings dismissing those allegations of the complaint involving water system costs and electricity/gas repairs between individual submeters and mobilehomes should be affirmed.

6. Residents were not precluded from bringing this action because of the earlier decisions of the Rent Review Commission and the Superior Court.

7. The complaint should be denied, effective immediately.

O R D E R

IT IS ORDERED that:

1. The Administrative Law Judge's rulings dismissing certain portions of this complaint are affirmed.

2. The complaint is denied, and Case 01-06-008 is closed, effective today.

Dated _____, at San Francisco, California.